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**BEFORE THE
TRANSPORTATION SECURITY ADMINISTRATION
U.S. DEPARTMENT OF HOMELAND SECURITY**

**Security Threat Assessment for Individuals Applying for a
Hazardous Materials Endorsement for a
Commercial Driver License; Interim Final Rule**

**Docket No. TSA-2003-14610 - 47
RIN 1652-AA17**

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DEPT OF TRANSPORTATION
DOCKETS

**COMMENTS OF THE GASES AND WELDING DISTRIBUTORS
ASSOCIATION**

The Gases and Welding Distributors Association (GAWDA) is a national trade association representing the interests of some 600 distributors of compressed and cryogenic gases and related supplies and equipment in the United States and Canada. GAWDA also represents approximately 300 manufacturers of gases and suppliers to the industry.

These distributor members of GAWDA fill, store, handle and transport medical and industrial gases in compressed and liquid form in cylinder and bulk distribution. Thus, all of GAWDA's distributor member companies are subject to the Hazardous Materials Regulations as both offerors and transporters of hazardous materials, and virtually all of their delivery truck drivers have hazardous materials endorsements for their Commercial Drivers Licenses.

GAWDA is concerned that the planned implementing schedule for background checks for all CDL drivers who hold hazmat endorsements is too ambitious and will lead to backlogs in conducting security risk analyses that could penalize drivers. The new regulations state that as of November 3, 2003, "no State may issue, renew, or transfer a

hazardous materials endorsement for a CDL unless the State receives a Notification of No Security Threat from TSA.” 49 C.F.R. §1572.5(c)(2)(i); 68 *Federal Register* 23852, 23870 (May 5, 2003). Yet if the State motor vehicle licensing agencies, TSA and the Federal Bureau of Investigation do not act in concert exactly as planned, this strict provision may end up barring a CDL driver who has applied to renew his/her endorsement in a timely manner from legally operating a vehicle with hazardous materials even though the driver has complied with all of the renewal requirements.

TSA’s final rule admits that the “process of collecting, submitting and analyzing fingerprints is resource intensive and complex.” *Id.* at 23857. The rule also notes that TSA and the States “will consult closely” to determine “the most cost-effective means of collecting fingerprints without unduly burdening State resources.” *Id.* Yet to date the TSA has not published any standards or protocols for collecting fingerprints from drivers and/or submitting them from collection sites to the TSA, which will then forward them to the FBI. These standards must indicate who will be authorized to collect the fingerprints, how they will protect the chain of custody of the prints so as to protect the driver’s identity and privacy, and what method will be used to send the fingerprints to the TSA and the FBI. And all of this must be in place and working by November 3, 2003.

Moreover, TSA estimates that this infrastructure must service the hazmat endorsement applications of some 3.5 million truck drivers “in a very short time period.” *Id.* But GAWDA believes that TSA has understated the number of drivers who will go through the background check process. Many motor carriers that do not transport hazmat will nevertheless require their drivers to obtain hazmat endorsements because the carrier will receive the benefit of the background check (and most likely require the driver to pay

for the check as well). This will provide non-hazmat carriers with some assurance that their drivers have not been convicted of any of the disqualifying offenses. GAWDA believes that there might be several million additional drivers funneled through the background check process by non-hazmat carriers who also want the benefit of the criminal review.

The new requirements mandate that: (1) a State must notify a CDL driver that a hazmat endorsement will expire at least 180 days before the expiration date, and (2) a driver must apply for renewal of an expiring hazmat endorsement at least 90 days before the expiration date. GAWDA is concerned that a driver who applies for renewal of a hazmat endorsement in a timely manner, *i.e.*, outside the 90-day window, might nevertheless face the prospect of losing the privilege of operating a hazmat vehicle because the State DMV, TSA or the FBI, or some combination of the three, does not respond in a timely manner to the renewal request.

This is not a mere hypothetical concern. For GAWDA members, a driver who loses the right to transport hazardous materials is no longer employable as all of the vehicles operated by GAWDA member companies require hazmat endorsements. Furthermore, a driver who has followed the rules and applied for renewal of a hazmat endorsement in a timely manner but is facing the expiration date without any notification from the State or the TSA will at best have sleepless nights worrying whether the background check results will come in before the hazmat endorsement expires and the driver is no longer able to work.

GAWDA member companies also must be able to rely on the prompt processing of background checks for CDL drivers with hazmat endorsements. Otherwise, the

companies will be forced to increase the number of drivers in their pool to make up for the delay in renewals for hazmat endorsements for driver employees.

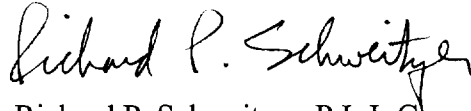
GAWDA therefore requests that the rule be amended to provide that a driver who applies for renewal of a hazmat endorsement before the end of the 90-day period prior to expiration is *presumed* to present no security threat until such time as TSA responds to the renewal application. Further, if the State agency has not heard from the TSA regarding the renewal application of such drivers within a certain time frame, *e.g.*, ten days before a driver's endorsement is set to expire, GAWDA requests that the final rule direct the State motor vehicle licensing agencies to issue temporary hazmat endorsements or extend the expiration date of existing endorsements until the background check is completed for drivers attempting to renew their endorsements.

The interim final rule does allow States temporarily to extend the expiration date of a hazmat endorsement until the State receives a response from TSA. 49 C.F.R. §1572.5(c)(3); 68 *Federal Register* at 23870. But this provision is insufficient for two reasons. First, it expires on April 29, 2004, and there is no guarantee that TSA, the FBI and the State motor vehicle licensing agencies will have a background check system working in harmony by that date.

Second, the provision is discretionary rather than mandatory. A State *may* extend the expiration date, but there is no requirement that it do so. A presumption that a driver presents no security threat and a directive to States to issue a temporary endorsement or extension of a current endorsement will give drivers and their employers the certainty of knowing that the driver may remain on the job unless the background check identifies some disqualifying offense. But the TSA should not force a driver to bear the burden of

waiting out the results from a new federal-state interagency system that has not yet proven workable or reliable in this industry.

Respectfully submitted,

A handwritten signature in black ink, reading "Richard P. Schweitzer". The signature is written in a cursive, flowing style.

Richard P. Schweitzer, P.L.L.C.
GAWDA General Counsel and Government Affairs
Consultant

1776 K Street, N.W.
Suite 800
Washington, D.C. 20006
(202) 223-3040
rpschweitzer@rpslegal.com

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